

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**Public Utilities Commission of
the State of California**

v.

Docket No. RP00-241-000

**El Paso Natural Gas Company,
El Paso Merchant Energy-Gas, L.P.
El Paso Merchant Energy Company**

**ORDER OF CHIEF JUDGE GRANTING
MOTION FOR ADMISSION OF DOCUMENT
AND ORDERING PRODUCTION**

(Issued August 21, 2001)

On August 8, 2001, counsel for Southern California Edison Company (SCE), the Public Utilities Commission of the State of California (CPUC), and Pacific Gas & Electric Company (PG&E) moved to admit into evidence the non-redacted version of Exhibit PUC-37 and ALJ-1. Both exhibits are different versions of the same document—a memorandum from Mr. Greg Jenkins of El Paso Merchant Energy Company (EPME) to Mr. William Wise of El Paso Corporation (Corporation) dated April 14, 2000. The subject of the memorandum is "EPEM Update - Board of Directors Meeting, April 27, 2000 - Newport Beach, Ca." One paragraph of the document was produced by EPME during discovery. That paragraph was admitted into evidence as PUC-37. During the hearing EPME removed the protected status of the first sentence of that paragraph. Later in the hearing SCE moved for an *in camera* review of the complete document by the Chief Judge to determine relevance and commercial sensitivity. The Chief Judge granted the motion and ordered EPME to produce the document for his *in camera* review. The Chief Judge made the *in camera* review following which he advised the parties on the record (Tr. pp. 5004 - 5010 and Tr. pp 5567 - 5568) that the April 14, 2000, memorandum contained highly sensitive business information, most of which was not relevant to this case other than to show the extent to which Mr. Wise and others in the

corporation, including officials of the pipeline affiliate, were kept advised of even minute details concerning the operation of EPME including plans to purchase, plans to bid, what's being negotiated, the results of negotiations, what's expected, what it would like to do, and even the hiring and firing of employees, the company's MBA program, the Summer hire program, contracts and proposed contracts, etc., etc. The Chief Judge pointed out that the last page of the document indicated it was copied to, among others, Mr. Somerhalder, overseer of El Paso Pipeline Company. The Chief Judge ruled that the memorandum contained highly sensitive business material the confidentiality of which he was going to respect and other than the paragraph already in evidence, it would not be a part of the record ". . . other than my summation of what it contains." (Tr. p. 5005 and p. 5010) The Chief Judge placed in the record as ALJ 1 the address portion of the April 14, 2000, memorandum and the portion showing copies to EPME stipulated that ALJ 1 was authentic.

It is the intent of the Chief Judge to make a finding of fact summarizing the contents of the document as he described on the record in this case and the fact that such sensitive information concerning the day-to-day operations of El Paso Merchant Energy, including circumstances that must exist to make the contract involved herein successful, was shared with not only Mr. Wise of El Paso Corporation, but also with Mr. Somerhalder of El Paso Pipeline. In its answer to the Motion for Admission of Document filed on August 17, 2001, EPME stated at p. 3: ". . . While EPME believes that the content of the document speaks for itself and respectfully disagrees with the characterization of and assumptions about the document made on the record by the Chief Judge, . . ." (Emphasis supplied) Because of the fact that EPME is now apparently, after the conclusion of the hearing, contesting the Chief Judge's summation of the document, it now becomes necessary for the document to be available for the Commission's review of the Chief Judge's decision and findings. Accordingly, EPME is hereby ordered to file with the Chief Judge, under seal, a full and complete copy of the April 14, 2000 memorandum on or before August 23, 2001. Because of the business sensitive nature of the material contained in the memorandum, one outside counsel for each party and a representative for the CPUC and a representative of the FERC trial staff can view the document in the Chief Judge's office. The un-redacted copy of Exhibit PUC 37 and ALJ 1 will be certified to the Commission under seal as the next ALJ exhibit with the record.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge